

Complaint Investigation Report
Parent v. School District
Complaint 23.032C
Complaint Investigator: David C. Webb
December 16, 2022

I. Identifying Information

Complainant: , Parent (Parent).

Respondents: , Superintendent and , Special Education Director,
Public Schools (District).

Student:

II. Summary of Complaint Investigation Activities

On October 21, the Maine Department of Education received this complaint. The complaint investigator was appointed on October 25, 2022.

The complaint investigator received 4 pages of documents from the Parent and 219 pages of documents from the District. Interviews were conducted with the following people:

The Parent;
, Special Education Director;
, District Clinical Supervisor;
, Elementary School Assistant Principal for Special Education;
, LCPC, CCS, Elementary School;
, Special Education Teacher, Elementary School; and
, Program Manager CDS and CDS .

III. Preliminary Statement

The -year-old Student resides with father in , Maine. is the educational responsibility of the School District (“District”) where qualifies for special education and related services as a student with Other Health Impairment. is diagnosed with ADHD.

This complaint was filed by the Student’s Parent alleging that the District violated the Maine Unified Special Education Regulations (“MUSER”). After the receipt of the Parent’s complaint, a Draft Allegations Letter was sent to the parties by the Complaint Investigator on October 26, 2022 alleging three separate violations of the MUSER. A telephonic Complaint Investigation Meeting was held on November 2, 2022.

IV. Allegations

1. Whether the District did not fully and adequately implement the Student's IEP in violation of MUSER §IX.3.B(3);
2. Whether the District did not follow required evaluation procedures in violation of MUSER §V; and
3. Whether the District failed to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c).

The Complaint Investigator reviewed all documents, information, and responses from the parties.

V. FACTUAL FINDINGS

1. The Student is the educational responsibility of the School Dept (“District”) where qualifies for special education and related services as a student with an “Other Health Impairment”. has been diagnosed with ADHD.
2. In an interview with the Complaint Investigator, the Parent stated that he has sole parental rights and responsibilities with regard to the Student and that the Student was in foster care between December, 2021 and May, 2022 due to abuse allegations filed against both Parents.¹ The Student has contact with mother and the Student’s half-brothers (ages seven and nine) at the father’s discretion, which is currently on Tuesdays and Wednesdays and on an every-other-weekend basis.
3. During the Student’s pre-kindergarten year (2021-2022), the Student received special education services through Child Development Services (CDS) while attended Elementary School in for four hours per day.
4. A June 17, 2021 psychological evaluation of the Student by Dr. stated as follows:
 - Behaviorally, [the Student] struggles with social boundaries and attention span. engages in pretend and imaginative play. does not have fixations and does interact with other children. has temper tantrums that include throwing things, yelling, kicking, and screaming. attention span is minimal. preschool teacher reports that has challenges completing non-preferred tasks

¹ During the time that the Student was in foster care, resided with five different foster parents. Both of the Student’s Parents lost parental rights during the time that the Student was in foster care.

and transitions are extremely difficult. struggles to follow 1-2 step directions. When is upset screams.

- Intellectual functioning falls in the average range. performed best with tasks of visual spatial memory, which were rote in nature, suggesting may do well with routines and procedure. verbal comprehension skills are average. visual spatial skills are in the high average range. Overall, the Student's intellectual functioning is in the average range.
- was highly distracted and constantly fidgeting... interrupted testing several times with behavior... did not display visual attention and lacks the skills to inhibit behaviors, organize thoughts and materials, and be flexible with thinking. These results suggest the presence of Attention Deficit Hyperactivity Disorder, Combined Type.

5. Dr. recommended as follows in her June 17, 2021 psychological evaluation of the Student:

- Support with social emotional regulation through the use of Zones of Regulation (cognitive behavioral approach used to teach self-regulation);
- Adult facilitated social play with peers;
- A behavior intervention plan that addresses compliance with directions, increasing sustained attention, and engaging in positive transitions;
- Support language with gestures, visual cues and key word signs;
- Give instructions as they are expected to happen. Incorrectly sequenced instructions may overload the student's working memory leaving confused and unable to process any part of the instruction;
- Use positively stated language. Negative statements do not give the student direction as to what they should be doing and can escalate anxiety and challenging behaviors.

6. According to a CDS initial referral IEP dated June 17, 2021, the IEP team determined that the Student was eligible for special education under the category of OHI. The team further determined as follows:

- The Student shall be placed in the general education setting receiving specially designed instruction by special education teacher in the regular ECE (early childhood education) classroom for 30 minutes three times per week with 1:1 support;
- That a positive behavior intervention plan would be developed and implemented for the Student; and
- An accommodation of motor breaks, use of “first/then language” supports and visual supports.

7. According to a CDS IEP dated October 29, 2021, the IEP team noted that is demonstrating difficulties in the general education classroom with peer interactions, sustaining attention, transition, and task completion. The team determined as follows:

- Increase special education instruction to 45 minutes four times per week; and
 - An accommodation of a timer and adaptive seating.
8. On November 16, 2021, the Student was referred for an OT evaluation to address functional needs, including self-help skills, adaptive behavior and play, and sensory/motor development.²
9. A December 7, 2021, CDS progress report noted as follows:
- The Student’s ability to sustain attention to a teacher directed activity is inconsistent. (51% of the time).
 - The Student struggles with sharing space and materials, turn taking and initiating interactions. benefits from adult facilitation to interact with peers appropriately.
10. A March 1, 2022 CDS progress report noted as follows with regard to the Student:
- was able to attend to a teacher directed activity for at least 6 minutes;
 - was more regulated in a smaller group of children (72% of the time);
 - ability to transition between activities greatly improved during the month of December (2021);
 - continues to need facilitation for peer interactions. has trouble sharing space and materials and doesn't often engage appropriately with peers. was beginning to develop some friendships in the classroom and use their names at times. would scream at a peer when frustrated.
11. According to a CDS/Public School Transition IEP team meeting on June 10, 2022, the IEP team determined as follows:
- Specially designed instruction in the self-contained classroom weekly for 876 minutes (14.6 hours per week);
 - Social Work Services for 660 minutes per trimester (60 minutes per week);
 - All previous goals and services (including a positive behavior intervention plan, motor breaks, first/then language, timer and adaptive seating) will remain on the IEP with the team convening for a 30 day review in the fall;
 - The IEP Team discussed and rejected a day treatment program for kindergarten in the fall. The team determined that this setting would be too restrictive;
 - The IEP Team rejected the option of a general education classroom as the least restrictive environment as the Student needs the direct support and instruction provided in a special education classroom.
12. The Student’s June 11, 2022 IEP specified that exhibited behaviors that impede learning and required a positive behavior intervention and support.

² Consent was given by the Student’s mother on October 31, 2021 before she lost her parental rights. On January 27, 2022, the referral was declined by the provider because the provider “cannot locate [the] contact for this child.” , CDS Administrator, said that the Student’s foster parents at that time declined to go forward with the referral for OT because they had no concerns about the Student’s fine motor skills.

13. The Student started kindergarten at _____ Elementary School in _____ in September, 2022.
14. Pursuant to a Written Notice dated September 8, 2022, the District attempted to schedule an IEP team meeting as determined by the June, 2022 IEP. The Parent declined the meeting because he did not feel it was necessary and was unable to miss more work.
15. A positive behavior support plan was developed by the Student’s case manager, with guidance from the school social worker and clinical supervisor. The plan identified problem behaviors as “aggression towards peers and staff” and “toileting protocols” and provided that daily progress would be provided in the home/school communication log.
16. The Student’s IEP team met on October 25, 2022 as part of _____ rescheduled 30 day program review. The Written Notice documented the following reports and observations:
- _____, Special Ed. Case Manager/Teacher:
 - i. The Student has had only 5 school days in the new classroom due to staffing changes in the building³.
 - ii. When _____ is dysregulated, observed behaviors are swearing, spitting, throwing objects in the room, verbal noncompliance, attempting aggression towards peers or aggression towards peer, aggression towards adults and/or moving furniture in the classroom.
 - _____, LCPC CCS:
 - i. _____ really struggles with being in the counseling group. _____ had one really good group in the beginning of the school year and it has been harder since then.
 - ii. _____ has a difficult time staying on task and _____ attempts to disrupt peers.
 - iii. Recommended that they seek outside therapy as well to help the Student process and work through _____ own past experiences and family changes.
 - _____, Assistant Principal of Special Education:
 - i. Implement a behavior plan and collect data on _____ behavior and let Ms. _____, who is new to _____, implement a behavior plan and then we can reconvene to see how that is going.
 - ii. _____ current classroom programming has a ratio of 2 students to 1 staff and the Student has lots of 1:1 time built into _____ day although _____ doesn't have 1 specific 1:1 hired just for _____.
 - The Parent:
 - i. _____ wanted the Student to have 1:1 support in _____ IEP “because of prior progress noted towards _____ goals when _____ had a 1:1...at _____ prior school.”
17. The October 25, 2022 Written Notice stated as follows:
- Add the following accommodations to the Student’s IEP:
 - i. toileting plan;

³ Ms. _____ confirmed that although the Student was in a different classroom for the first month of school, IEP was implemented during that time.

- ii. positive behavior support plan;
 - iii. home to school communication log;
 - iv. noise canceling headphones;
 - v. visual schedule supports;
 - vi. access to preferred staff when anxious;
 - vii. access to a break bin/sensory bin; and a
 - viii. “cool down” pass.
- Addition of a behavior goal focusing on reducing the number of bowel accidents occurring per week;
 - The addition of social work goals in order to track progress in applying new skills/strategies practiced during social work sessions;
 - Addition of academic goals addressing grade level standards
 - An Occupational Therapy observation in order to address noted parent concerns in the area of fine motor skills;
 - The team considered the addition of a 1:1 support aid to [The Student’s] plan, however this was rejected due to insufficient data to show that this would be successful for [the Student] at this time.
18. On October 28, 2022, an incident report was prepared following the Student’s “karate chopping” another student on the back. The report noted the Student’s failure to respond to prompts to stop, and “escalating and becoming more aggressive.”
19. The Student’s IEP team met again on November 9, 2022 in order to revisit programming and supports. At this meeting, the team reviewed the Student’s behaviors and revisited the idea of a more therapeutic setting. The Parent noted that he “would rather wait on the placements” but agreed to move forward on the referral to the School if the Student is accepted. The team also ordered updated evaluations including psychological, academic classroom observation and rating scales.
20. The Student’s November, 2022 progress report noted as follows:
- Math:
 - i. The Student partially met two out of three of goals in math; report noted that “emotional regulation and display of maladaptive behaviors interferes with willingness to participate in structured academic tasks.”
 - Reading:
 - i. The Student partially met goals in “read alouds” but received a “does not meet” on one-to-one letter sound correspondences due to the frequency of maladaptive or noncompliant behaviors (ex: hitting, kicking, tearing papers, throwing materials, spitting, etc.) [The Student] has not complied with joining or engaging in instruction or activities relating to letter sound correspondence; thus is unable to assess at this time, 0%;
 - Writing:
 - i. The Student received a “does not meet” on foundational writing skills.

- Behavioral:
 - i. The Student partially met goals in reducing toileting accidents, sustained attention to a teacher directed activity and independence with peer interactions, noting that requires close adult proximity in shared peer spaces due to the continued display of aggressive behaviors towards peers.
 - ii. Received a “does not meet” with regard to ability to independently transition from preferred activities to nonpreferred activities. The report noted that “displayed maladaptive behaviors (ex: screaming, hitting, running from the area, and destruction or attempted destruction of school property, etc.) in 80% of observed opportunities to transition from preferred to nonpreferred activities.”
 - iii. Received a “does not meet” with regard to ability to demonstrate an appropriate emotional response through finding a solution to problem. The report noted that “struggles with demonstrating appropriate emotional responses. currently does not have strategies that regularly uses in order to return to an expected emotional state without the assistance of staff. [The Student] will yell, scream, hit, bite and throw toys when is feeling frustrated. currently has not been able to return to a task at hand within 2 minutes for an average of 50% of instances in the classroom.”
 - iv. Received a “does not meet” with regard to ability to accurately identify feelings and appropriate coping strategies/skills and practice these coping strategies in counseling. The report noted that the Student “has not yet been able to meet with clinician alone in office to work on learning coping strategies. Much of the time spent with [the Student] is in the classroom. When is frustrated or wants something way will often resort to screaming, throwing toys, running from the classroom and exhibiting physically aggressive behaviors toward staff and peers.”
 - v. Received a “does not meet” with regard to ability to use a self-regulation/coping strategy (movement break, deep breathing, quiet space break, fidgets, headphones etc.) learned in counseling, to avoid engaging in an unexpected behavior.

21. In an interview with the Complaint Investigator, the Parent stated as follows:

- The Parent said that the Student attended the school on a half day basis during last year, where had 1:1 staff support for 30 minutes for four days per week. noted that this 1:1 support is referenced in the Student’s June, 2021 IEP.
- The Parent said that the Student was successful with 1:1 last year. He feels that does better with one person who can help to stay focused. no longer

has a designated 1:1 support person and now is having problems. He feels that the District is not doing anything to help and he “doesn’t like public education” but there is nothing he can do. He is concerned because school staff haven’t shown him why the Student is exhibiting these behaviors and they have not shown him proof that a 1:1 support person is not necessary.

- The Parent is also concerned because the Student is not receiving 1:1 counseling. Rather, is getting group counseling only. He stated that he understands that counselor has tried to provide individual sessions for the Student.
- He also believes that there was no behavior plan in place at the beginning of the year and he is not seeing any academic progress for the Student, which the school has said is due to the Student’s behaviors.
- The Parent acknowledged that he received regular email reports from the Student’s teacher during this school year, although he said that District staff did not communicate well with him during the first month of the school year.
- On December 15, 2022, the Parent contacted the Complaint Investigator by email reporting that the Student had been recently suspended for one day “for hitting a kid in the nose.”⁴ He said that he was concerned because District staff did not tell him why the Student did this.

22. In an interview with the Complaint Investigator, , Program Manager for CDS and CDS , stated as follows:

- She had case management and administrative oversight of the Student’s special education programming while attended CDS in and CDS in during the 2021-2022 school year.
- The Student was placed in foster care due to abuse allegations against both parents from December, 2021-May 2022. During that time, the parental rights of both parents were suspended and the Student lived with five different foster homes. At least one of the foster homes was in the Maine CDS catchment area called “CDS .” Ms. also serves as the manager for this program.
- She said that the Student made “great gains” in program at CDS last year.
- She attended the transition IEP team meeting on June 10, 2022. She said that the IEP team considered a day treatment program for the Student in the fall but this was declined as “too restrictive.” She said that the team’s ultimate decision to place the Student in the self-contained special education classroom was in part made due to the Parent’s concerns.

⁴ In a follow up telephone call, the Parent confirmed to the Complaint Investigator that the Student returned to school on December 19, 2022.

- She noted that the CDS IEP provided for 1:1 support because [redacted] was pulled out of regular education classroom to receive [redacted] instruction. She said that transitioning out of 1:1 support is common when a student moves to a self-contained placement and in this instance the team determined 1:1 support was unnecessary in light of the Student’s placement in a self-contained room where there is an appropriate number of trained staff to provide direct instruction and respond to needs. She said that the Student is “getting more intensive support and more services” than what [redacted] received at CDS.
- She did not completely understand why the Student has regressed this year, but said that the Student “has been through a lot” last year.

23. In an interview with the Complaint Investigator, [redacted], Special Education Director, stated as follows:

- The Student’s CDS IEP did reference 1:1 support due to the fact that [redacted] was pulled out of [redacted] regular education classroom for 30 minute sessions in order to receive [redacted] instruction with [redacted] special education teacher. When [redacted] program was transferred to the [redacted] School District in June, 2022, [redacted] was placed in a self contained room where [redacted] receives [redacted] specifically designed instruction for 31.5 hours per week.⁵
- The Student’s positive behavior support plan, which has been in place since the beginning of this school year, was created by [redacted], [redacted] and [redacted]. She noted that [redacted] tracks the Student’s behavior data and that [redacted], the Student’s special education teacher for the first month of this school year, tracked data before that.

24. In an interview with the Complaint Investigator, [redacted], the Student’s special education teacher stated:

- She is in the self-contained classroom with the Student, providing instruction and support, for a full day each day. The Student is one of eight children in her room which focuses on students with behavior challenges, grades K-third grade. Additional staff in her room include three ed techs, all of whom have BHP (Behavior Health Professional) training.
- At the beginning of the year, she attempted to have the Student participate with [redacted] typically developing peers with art and gym. She stopped this practice after the Student bolted from staff and become aggressive, including hitting, kicking, and spitting staff and other students. She said that [redacted] is “the most challenging” of her students and has, on average, 51 acts of aggression per day. She noted that

⁵ The June, 2022 transition IEP from CDS incorrectly noted that the Student would receive instruction for 866 minutes (14.5 hrs) per week for the 2022-2023 school year. The Student has, however, been receiving instruction in the self contained classroom since the beginning of the school year for a total of 31.5 hours per week.

there is always another adult next to [redacted] and when [redacted] is dysregulated, there are often two adults who are supporting [redacted].⁶

- She tallies the Student's acts of aggression into a spread sheet. She communicates with the Parent through email on a daily basis.
- She said that the reference to the Student's 1:1 support was due to [redacted] being "pulled out" of [redacted] regular education programming for 90 min/week. In light of [redacted] placement in the self-contained room this year, the June 2022 IEP team, which included [redacted] teachers and staff from CDS, did not recommend 1:1 support for the 2022-2023 school year.
- The Student's counselor, [redacted], has attempted on multiple occasions to work with the Student on a 1:1 basis, but the Student has refused, becoming dysregulated. As a result, Ms. [redacted] has provided services to the Student in the self-contained room with other students present.
- She feels that the Student's trauma history has had a major impact on behaviors and that [redacted] would do much better in a clinical setting like the [redacted] school in [redacted], Maine.

25. In an interview with the Complaint Investigator, [redacted], [redacted], District Clinical Supervisor stated:

- She started with the Student last spring where she oversees [redacted] clinical program and is available to support staff working with the Student, including responding to the Student's behaviors. She noted that she tried to schedule an observation with the Student in April of 2022 but CDS "couldn't find [redacted]" for a period of time due to changes in [redacted] foster care. She said that she has had some history and interactions with the Student's half-brothers in other contexts. She noted that the Student's mother had "a very flat affect" and she was not confident that she was "in-tune with the needs of her kids." Ms. [redacted] noted a "big discrepancy between teacher and parent scores" with regard to the Student's behavior assessments as noted in Dr. [redacted] June, 2021 psychological evaluation.
- The Student has experienced a lot of trauma, especially last year with numerous foster home placements and separation from [redacted] parents and siblings. She has recommended an updated psychological evaluation and said that she would anticipate that [redacted] diagnosis includes PTSD. She feels that the Student needs a special purpose private school like the [redacted] School, which has more of a family focus.
- With regard to the Parent's concern about the 1:1 support issue, she noted that the Student did have 1:1 support during the times that [redacted] behavior was elevated. Even with this 1:1 support, she observed that the Student remained very

⁶ Ms. [redacted] said that she is required to "clear the classroom" of all other students due to [redacted] behavior outbursts approximately two-three times per week.

aggressive even after teacher was providing “all [of the appropriate] verbal deescalating skills.”

26. In an interview with the Complaint Investigator, _____, _____ stated:

- She is the special education clinician providing the Student’s social work services. She noted that due to the Student’s behavior challenges, she is in _____ classroom on a daily basis providing significantly more than the 60 minutes per week as called for in the Student’s IEP, especially when behavior incidents occur. She noted that she regularly observes staff trying to deescalate the Student and tracking behaviors “with clickers.” She and the classroom staff meet as a team on a weekly basis. She also provides support and input regarding the Student’s behavior plan.
- No solid approach has really worked well for the Student to date. She does not think that the District has “all of the tools available” and that a therapeutic setting would be better for the Student to help _____ deal with the trauma _____ has experienced in _____ life.
- She attempted to do 1:1 office visits with the Student, but _____ refused. As a result, she has provided services to _____ in the group setting in _____ self-contained classroom with three other students.
- She has talked to the Student’s father a few times on the phone and at IEP team meetings. She has also advised him about different referrals, case management, additional counseling and coordinating approaches used at home. She believes that the Father is “stuck on 1:1” support without realizing that in fact the Student now has 2:1 support for most of _____ day.
- She noted that the self-contained class is a challenging environment for the Student and the other children in the classroom. She said that the class has eight or nine other kids in the K through third grade range, and even though _____ is one of the youngest and smallest children, the other kids “are scared of _____.” She said that she recently observed that _____ hurt another child after hitting him over the head with a white metal board. She said that she observed “very little remorse” on the part of the Student after this incident.

27. In an interview with the Complaint Investigator, _____, _____ Elementary School Assistant Principal for Special Education, stated as follows:

- She is an assistant principal tasked specifically with special education administration and oversight. In this role, she reviews all paperwork and facilitates meetings but does not provide any direct services to students.
- She checks in on the Student’s class at least once per week and converses regularly with _____, _____ special education teacher. She reviews the behavior data tracking for the Student and has had several conversations with the Student’s father about _____ educational programming.

- She reviewed the Student’s IEP while attended CDS and said that the reason had a 1:1 support was because was in a preschool general education setting and was the only one getting services from class. She mentioned this to the father and said that even though the Student’s current IEP does not specifically designate 1:1 support, gets a lot of 1:1 time during the day with four staff working in small classroom.
- She believes that the Student is “more than capable” academically, but needs a placement like the School in order to address behavior and trauma issues.

VI. DETERMINATIONS

1. **Whether the District did not fully and adequately implement the Student's IEP in violation of MUSER §IX.3.B(3);**

COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND

Children with disabilities are afforded certain rights and protections under MUSER and the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. These rights include the development of an IEP and the delivery of special education services and supplementary aids in the least restrictive environment. MUSER §VI.2.J. (4) provides that one of the Major IEP Team Responsibilities is to develop or revise an Individualized Education Program to provide each identified child with a disability a free appropriate public education.

The First Circuit Court of Appeals has declared that “the IDEA entitles qualifying children to services that target ‘all of [their] special needs,’ whether they be academic, physical, emotional, or social.” *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1089 (1st Cir. 1993) “Educational performance in Maine is more than just academics.” *Mr. and Mrs. I v. Maine School Administrative District No. 55*, U.S. Court of Appeals, First Circuit 06-1368 06-1422 107 LRP 11344, March 5, 2007.

Among the related services which must be included as integral parts of an appropriate education are “such development, corrective, and other supportive services (including psychological services . . . and counseling services) as may be required to assist a handicapped child to benefit from special education.” 20 U.S.C. § 1401(17).

There is a two-part standard for determining the appropriateness of an IEP and placement. First, was the IEP developed in accordance with the Act’s extensive procedural requirements? Second, was the IEP reasonably calculated to enable the child to receive “educational benefits”? *See Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*

(“*Rowley*”), 458 U.S. 176, 206 (1982); *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 27 (1st Cir. 2008). “Adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.” *Rowley*, 458 U.S. at 205.

The Supreme Court recently explained its *Rowley* standard by noting that educational programming must be “appropriately ambitious in light of a student’s circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Andrew F. v. Douglas County School District RE-1*, 2017 WL 1066260 (Mar. 22, 2017).

MUSER IX.3.B (3) addresses an SAU’s responsibility for implementation of a student’s IEP and provides as follows:

Each school administrative unit shall implement a child with a disability's Individualized Education Program as soon as possible following the IEP Meeting but no later than 30 days after the IEP Team's initial identification of the child as a child with a disability in need of special education and supportive services. All identified children with disabilities shall have a current Individualized Education Program in effect at the start of each school year.

In the present case, the IEP team determined at their transition meeting in June of 2022, that the Student would be placed in a self-contained classroom. The team added one hour per week of social work services. The self-contained classroom at the _____ school has a special education teacher and three ed techs with specialized behavior training.⁷ The Student is one of eight children in this classroom which focuses on students with behavior challenges.

At the beginning of the 2022-2023 school year, the team implemented the June, 2022 IEP and developed a positive behavior support plan, tracking the Student’s behaviors. According to staff, efforts were made to have the Student interact with _____ typically developing peers in art and gym, however the Student became too aggressive to continue this practice. Additionally, the Student’s counselor attempted to provide services on a 1:1 basis in her office without success. The Parent acknowledged that Student’s teachers were in regular contact with him by email and

⁷ The June, 2022 transition IEP from CDS, which was carried over to the District, incorrectly noted that the Student would receive instruction for 866 minutes (14.5 hrs) per week for the 2022-2023 school year. Based on the uncontroverted statements of staff and other records that show the Student’s placement in the self contained classroom for a full school day, the record supports a finding that that the Student has been receiving instruction in the self contained classroom since the beginning of the school year for a total of 31.5 hours per week. This was a de minimis violation and did not result in a loss of FAPE for the Student. see, *Farrin v. Maine School Ad. Dist.*, No. 59, 165 F. Supp. 37 (D. Me 2001).

phone, and the Parent attended IEP team meetings on June 10, October 25 and November 9, 2022.

While the Student's IEP from the 2021-2022 school year specified that [redacted] would receive SDI services on a 1:1 basis, the "1:1" provision was not in the June, 2022 transition IEP. According to interviews with multiple staff, including the CDS administrator, the 1:1 delivery of the Student's SDI was based on [redacted] placement in the *general education setting* at CDS [redacted]. (emphasis added). [redacted], the Student's special education teacher, said "there is always another adult next to [redacted] when [redacted] is in [redacted] classroom. She noted that "when [redacted] is dysregulated, there are often two adults who are supporting [redacted]." [redacted], the Student's counselor, said that the Student now "has 2:1 support for most of [redacted] day."

The record supports a finding that the 1:1 support was made so that the Student could receive specially designed instruction by [redacted] special education teacher in a pull out setting, away from [redacted] typically developing peers. There was no reference to 1:1 on support in the June, 2022 IEP. Accordingly, there was no violation of MUSER IX.3.B (3) with regard to the implementation of the Student's IEP.⁸

As noted, when the Student started at the District in the fall of 2022, [redacted] was in a self-contained room where [redacted] received specifically designed instruction for 31.5 hours per week. Evidence supporting the District's attention to the June, 2022 IEP is shown by its attempt to schedule an IEP team meeting on September 8, 2022 to review the Student's plan. The Parent, however, declined the meeting because he did not feel it was necessary and was unable to miss more work.

With regard to the Student's behavior programming, MUSER §IX.3.C (2)(a); provides that the IEP Team shall, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. MUSER §II.21 defines "positive reinforcement interventions and supports" as "the use of positive techniques designed to assist a child to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors."

In this case, a positive behavior support plan created by [redacted], and [redacted] has been in place since the beginning of this school year. [redacted] and [redacted] regularly meet and talk about behavior strategies for the Student. [redacted] tracks the

⁸ It appears that the Parent was aware of the specific need for 1:1 support in the Student's general education placement. In the October 25, 2022 Written Notice, the Parent acknowledged that the Student only had 1:1 support "in the form of pull out sessions, not all day."

Student's behavior data and tallies the Student's acts of aggression into a spread sheet. This information is communicated to the Parent through email on a regular basis.⁹

In addition to its duty to implement a student's IEP, a school district is obligated, within a reasonable period of time, to review and develop a programming alternative once it becomes clear the student's IEP is not working. *M.C. ex rel. JC v. Central Regional School District*, 81 F.3d 389, 396-97 (3d Cir.), cert. denied, 519 U.S. 866, 136 L. Ed. 2d 116, 117 S. Ct. 176 (1996). In the present case, the record supports a finding that the District was attentive to its obligation to review the Student's progress and to make adjustments. When the Student's behavior continued to escalate, IEP team met on November 9, 2022, two weeks after previous IEP team meeting, to review options to address concerns regarding the Student's behavior. At this meeting, the team determined to order updated evaluations and prepare a referral packet for the School.

2. Whether the District did not follow required evaluation procedures in violation of MUSER §V; and

3. Whether the District failed to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c).

COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND

MUSER §IX.3.C (1)(c) provides that in developing each child's IEP, the IEP Team must consider the results of the initial evaluation or most recent evaluation of the child. In *School Union #51* 26 IDELR 1193, 26 LRP 4557, (Maine, 1997), the Hearing Officer found that a school district denied a 15-year-old ninth grader a FAPE when it failed to review an evaluation of the student. In the *School Union #51* case, the Hearing Officer held:

It is the responsibility of the PET to review all the existing evaluations in developing the program for a student... It appears from the record that the Speech/Language evaluation of September 1996 was never reviewed by the PET. This evaluation contains some excellent concrete academic recommendations that were never discussed and thus are not in the I.E.P. where they belong. *School Union #51 Id.*

The record in this case shows that the District complied with MUSER §IX.3.C (1)(c). The IEP developed in June, 2022 references Dr. [redacted] 2021 evaluation and in accordance with her recommendations, developed and updated a behavior intervention plan and added social

⁹ Parent acknowledged that he received regular email reports from the Student's teacher during this school year.

work services and language supports. By delivering the Student's program in a behavior-focused, self-contained classroom, the team considered the academic, developmental and functional needs of the Student. To the team's credit, when it became apparent that this placement was not working for the Student, it promptly met to order additional and updated evaluations and to consider alternative placement options.

MUSER §V provides, in relevant part, that the initial evaluation of a student must be conducted within 60 calendar days of receiving parental consent for the evaluation for children in the Child Development Services System, or within 45 school days of receiving parental consent for the evaluation for children 5-20 years of age ...to determine if the child is a child with a disability and to determine the educational needs of the child. Pursuant to MUSER §V(1)(B), reevaluations must occur at least once every 3 years unless a school district determines that the needs of child warrant a reevaluation before the reevaluation period.¹⁰

The Student's last evaluation was administered in June, 2021 and the required three year reevaluation of the Student is not due until June 2024. Because of the ongoing concerns with the Student's behavior, the IEP team proposed at the November 9 IEP team meeting to conduct updated evaluations including psychological and academic evaluations, rating scales and a formal classroom observation.

The record supports a finding that IEP Team not only considered the results of the most recent evaluation of the Student, but also took the proactive step to order reevaluations in response to the Student's ongoing behavior concerns. Accordingly, the record supports a finding that the District appropriately considered existing evaluation data and the academic, developmental and functional needs of the Student in accordance with MUSER §IX.3.C (1)(c).

VII. CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

As the record supports a finding that the District complied with MUSER and the IDEA, there is no corrective action that must be completed by the District.

The Parties are encouraged to agree on conducting evaluations with regard to the Student's behavioral concerns and to convene an IEP team meeting within 30 days of said evaluations to discuss further modifications, placement and accommodations to the Student's IEP to address these concerns.

¹⁰ MUSER §V(1)(B): An SAU must ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (1) and (2):

(a) If the SAU determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation;